

Attorney Docket No.: 2003B123

Remarks**Subject Matter of the Invention**

The present application is directed to elastic non-woven fabrics made from blends of polyolefins. In particular, the invention relates to elastic non-woven fabrics manufactured from a blend of a propylene polymer component and an alpha-olefin polymer component.

**Status of the Claims**

Claims 1-71 and 89-115 are currently pending. Claims 72-88 and 116-117 were previously withdrawn from examination in response to a restriction requirement dated July 28, 2005. None of the claims have been amended. No new matter has been added.

Claims 1-71 and 89-115 were rejected under 35 U.S.C. §103(a) in the office action dated September 20, 2005. Applicants respectfully traverse these rejections.

**Rejections Under 35 U.S.C. §103(a)***Timmons (EP 0462574 B2) in view of Datta (EP 1223191 A1)*

Claims 1-71 and 89-112 were rejected under §103(a) as allegedly being unpatentable over Timmons in view of Datta because, as stated in the office action, "[i]t would have been obvious at the time the invention was made ...to modify resin composition of Timmons and provide it with the blend composition of Datta et al. with the motivation of producing a material with increased tensile strength and improved process characteristics as disclosed by Datta et al (Abstract)." Office action at page 4. Applicants respectfully disagree.

To establish a *prima facie* case of obviousness, three criteria must be met: (1) there must be a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of skill in the art, to combine the cited references; (2) there must be a reasonable expectation of success; and (3) the references, when combined, must teach or suggest all of the claim limitations. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the applicants' disclosure." MPEP §2142. When one of these requirements is absent, obviousness cannot be shown. Further, the mere fact that references *can* be combined does not establish *prima facie* obviousness unless the prior art suggests the desirability of the combination. MPEP §2143.01. Otherwise, the examiner's conclusion of obviousness is based on knowledge gleaned from the applicants' disclosure, and, as such,

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represents an improper use of hindsight. MPEP §2145(X). Based upon the foregoing criteria, a *prima facie* case of obviousness has not been established in the present case.

Timmons is directed to nonwoven fabrics having small pore size distributions intended for uses requiring a "significant improvement in porosity and inhibition of strikethrough." Timmons at page 2, lines 25-30. Datta, however, is directed to polymer blends comprising an isotactic polypropylene component and an alpha-olefin and propylene polymer component. Datta at Abstract. The Examiner has cited the Abstract of Datta to support a motivation to combine the Timmons and Datta references. The Abstract of Datta, however, does not disclose or suggest fabrics or fibers. In fact, the Datta reference does not teach, disclose, or suggest use of the blends described therein to make fibers or fabrics at *any* point in the specification or claims.

Further, Timmons teaches that, in order to form the fibers and melt-blown webs described therein, polypropylene must be cracked using peroxide to form a modified resin having a narrower molecular weight distribution (MWD) and a higher melt flow rate (MFR) than the starting polypropylene. Timmons at paragraphs 6 through 11. This modified resin has an MWD between 2.8 and 3.5, and an MFR between 800 and 5000 g/10 min (at 230 °C). Timmons at paragraphs 9 and 10. A person of ordinary skill in the art, when presented with the Timmons reference, would not use the materials described in Datta in conjunction with the teachings of Timmons to achieve the purposes of the claimed invention, namely creating a non-woven fabric having elastic properties. Peroxide cracking of the polymers described in Datta to a melt flow rate greater than 800 g/10 min (230 °C) would, instead, form materials having molecular weights too low to obtain the elastic benefits described in the present application. See, *e.g.*, specification as filed at paragraphs 69-73, illustrating the improved elastic properties of the present invention.

Neither Timmons nor Datta is directed to fabrics and/or fibers having improved elastic properties, as described in the pending application, and neither reference provides the requisite motivation to make the claimed combination. A person having ordinary skill in the art simply would not be motivated based upon the disclosures of Timmons and Datta to combine the references to form a non-woven fabric having improved elastic properties comprising the first and second polymer components as claimed. Similarly, neither reference provides the required reasonable expectation of success. Applicants respectfully suggest that any such motivation or expectation of success is therefore the result of impermissible use of hindsight based on the teachings of the present disclosure. MPEP §2145(X). Accordingly, a *prima facie* case of obviousness has not been established.

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*Timmons in view of Datta and Aratake (US 5,910,362)*

Claims 113-115 were rejected under §103(a) as allegedly being unpatentable over Timmons and Datta, and further in view of Aratake because, as stated in the office action, [i]t would have been obvious at the time the invention was made to ...use staple fibers in the production of the nonwoven fabric motivated by the desire of producing fabrics having a high strength and excellent hand feeling as taught by Aratake." Office action at page 5. Applicants respectfully disagree.

The deficiencies of Timmons and Datta have been addressed above. As previously stated, neither Timmons nor Datta is directed to fabrics and/or fibers having improved elastic properties, and neither reference provides the requisite motivation to make the claimed combination. Similarly, Aratake does not disclose or suggest fabrics and/or fibers having elastic properties and therefore also does not provide a motivation to make the claimed combination. As a result, Aratake does not remedy the deficiencies of Timmons and Datta, and a *prima facie* case of obviousness has likewise not been established with respect to claims 113-115.

**Double Patenting Rejections**

Claims 1-71 and 89-115 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,342,565 for the reasons stated on page 6 of the Action. Applicants submit herewith a terminal disclaimer along with the requisite fee and respectfully request that the rejection be withdrawn.

Claims 1-71 and 89-115 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/969,489 for the reasons stated on page 5 of the Action. Applicants submit herewith a terminal disclaimer along with the requisite fee and respectfully request that the rejection be withdrawn.

**Conclusion**

Applicants respectfully submit that the foregoing constitutes a complete reply to the office action dated September 20, 2005 and that the arguments presented herein place the application in condition for allowance. Accordingly, withdrawal of the outstanding rejections is respectfully requested.

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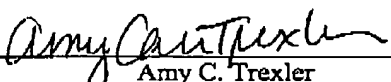
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Applicants invite the Examiner to telephone the undersigned attorney, if there are any issues outstanding which have not been presented to the Examiner's satisfaction.

Respectfully submitted,

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Date

  
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